In Chapter One the phenomenon of international law in the modern world was displayed in six very different contexts. In each case it was seen, first, to consist of norms: principles such as diplomatic immunity and *pacta sunt servanda*; jurisprudential regimes such as the territorial sea, territorial airspace, and international straits; doctrines such as the right of self-defense; and prohibitions such as the ban on wars of aggression. To become operational, as we have noted, the norms of international law have to be identified, applied, accepted, promoted, and developed through institutions: mostly by states and inter-state entities such as the International Court of Justice, *ad hoc* international tribunals, the International Law Commission, the UN Security Council, the UN Secretary-General and certain UN specialized agencies like IMO, ICAO and the United Nations Environment Programme (UNEP). As a bureaucracy, the international system is well served by a huge, and relatively, competent Administration, and by a professional Judiciary that still operates under more seer constraint than would be normal at the natural level. Its development depends on processes, including conference diplomacy, treaty-making, codification, dispute settlement, and perhaps even diplomatic protest. Its formal sources are usually treaties (“conventional international law”), but often patterns of “state practice” that are sufficiently uniform to be evidence of “customary international law”. Key individuals centrally involved in the processes of identification, application, promotion and development may include judges on international tribunals, legal advisers to foreign ministries, prominent ambassadors, and even major scholars. Neither the existence nor the “relevance” of international law is in question.

Yet it is evident that “the system” is institutionally incomplete. The analogy with a national legal system breaks down. The international community lacks a central focus of authority, especially in the Executive and Legislative branches of “world government”. In certain areas, international law is sophisticated and works well, its norms rarely challenged. In other contexts, the system is less than “systemic”. In most governments, legal opinion is usually taken prior to certain types of foreign policy decisions, but legal input is often obliged to yield to other kinds of advice. Moreover, some old norms of international law, dating back to the age of imperialism or earlier, are suspect in the eyes of non-Western governments and lesser powers.

The field of international law today accommodates a wide diversity of perspectives. Specialists differ significantly in their assessment of the character, scope, and
effectiveness of the law of nations. They may also disagree on its future directions, and even on its origins. Before embarking on an excursion into the history of international law, it may be useful to examine the “imagery” of its guardians and proponents. The images of international law have a life of their own, but international law does not always seem to be what it is.

**The Eurocentric Heritage**

For those who make up the mainstream of the international law community, it may be sufficient to define the field in the classical fashion as “a system of rules designed to govern the relations among states”. If emphasis is placed on the need for systemic continuity and coherence, it might not seem to be necessary to seek out an origin of international law earlier than the 16th century, when the present system of inter-state relations took root in Western and Central Europe. But to insist on a modern European origin of international law is to depict the system as the normative infrastructure of a regional/cultural system of diplomacy, albeit one that would later grow – and is still growing – outwards to other regions and cultures through an expanding order of relatively benevolent but imposed authority.

The “classical” Eurocentric approach to the origin of international law creates expectations that are not easily met under the conditions of contemporary world society. First, to begin the history of international law with a concert of relatively like-minded, culturally compatible, nation-states, such as those of 16th and 17th century Europe, grants primacy to the state over society and to one system of civilization over all others. This orthodox view of the origin of the international legal system gives paramountcy to statist values: for example, state sovereignty, state equality, the principle of consent, the inviolability of territory, sovereign immunity, diplomatic privilege, and the doctrine of non-interference in the internal affairs of another state. In short, much of traditional international law seems designed to buttress the “sanctity of the state”.

Second, the historical fact of European ascendancy during the period of the system’s maturation has ensured that almost the entire vocabulary of international law is of Roman, and therefore civil law, origin. The normative system promoted by Western European scholars was inspired by the “rule of law” ideal created by the jurists of Roman antiquity. To these scholars the emerging system could have no future but eventual flowering as a formally complete system of law. It was agreed that international law was “legal” in character, not a disconcerting mix of legal, ethical and political elements. It had to be discrete, set apart from religion and morality as well as from politics.

Third, the European heritage in classical international law ensured that professional technicians would nurture it, as they have nurtured the great legal systems from which it was derived and adapted for inter-state purposes. Flexibility within the system of rules would be assisted by legal doctrine, chiefly through resort to analogy with the most appropriate norms and concepts of civil law. Characterized as a “sub-discipline” of the discipline of law in general, the field was expected to evolve as a “science” that one day would reach a stage of development where it would frequently